

IN THE HAMILTON SUPERIOR COURT 1
CAUSE NO. 29D01-0703-PL-277

FILED
AUG 5 2008
Peggy Beaman
CLERK OF THE
HAMILTON SUPERIOR COURT

The Plaintiff, State of Indiana, by Attorney General Steve Carter, Certified Legal Intern E. Paige Boggs, and Deputy Attorney General Thomas Irons, having filed its Motion for Summary Judgment and its Memorandum and Designation of Evidence in support of Plaintiff's Motion for Summary Judgment, and the Court having concluded a hearing on the same, now **GRANTS** the Plaintiff's motion and makes the following findings of undisputed facts and conclusions of law.

FINDING OF FACT AND CONCLUSIONS OF LAW

1. The Defendant, Rhonda Klein, is the spouse of the Defendant, Richard Klein, and resides in Hamilton County at 1980 W. 216th St., Sheridan, Indiana, 46069.
2. Mr. Klein has not fully paid the monetary portion of the Default Judgment entered against him by the Marion Superior Court on May 15, 2002.
3. On June 20, 2006, Mr. Klein entered into a contract with Cartersburg Community Church ("the Church") to perform certain construction work.
4. On June 21, 2006, the Church tendered check number 1234 to Mr. Klein in the amount of Four Thousand One Hundred Fifty-Two Dollars (\$4,152.00) as partial payment towards a construction project.
5. On June 22, 2006, Mr. Klein endorsed the check (number 1234) and made it payable to Mrs. Klein, which she subsequently deposited into her individual checking account.
6. On June 22, 2006, the Church tendered check number 1235 to Mr. Klein in the amount of Four Thousand One Hundred Fifty-Two Dollars (\$4,152.00) as partial payment toward the construction project.
7. On July 5, 2006, Mr. Klein endorsed the check (number 1235) and made it payable to Mrs. Klein, which she subsequently deposited into her individual checking account.
8. On August 31, 2006, the Church tendered three (3) checks to Mr. Klein as partial payments for the construction project. The first check was check number 1282, in the amount of Two Thousand Nine Hundred Eight Dollars and Thirty-Nine Cents (\$2,908.39). The second check was check number 1283, in the amount of Four Thousand

One Hundred Fifty-Two Dollars (\$4,152.00). The third check was check number 1284, in the amount of Four Thousand One Hundred Fifty-Two Dollars (\$4,152.00).

9. On September 1, 2006, Mr. Klein endorsed the three (3) checks (numbered 1282, 1283, and 1284) and made them payable to Mrs. Klein, all of which she subsequently deposited into her individual checking account.

10. On August 6, 2006, Mr. Klein entered into a contract with Shanika R. Johnson. Mr. Klein agreed to re-roof and replace the siding on Ms. Johnson's home for a total price of Three Thousand Eight Hundred Thirty-Five Dollars (\$3,835.00).

11. This contract between Mr. Klein and Ms. Johnson constitutes a home improvement contract, pursuant to Ind. Code § 24-5-11-4.

12. Ind. Code § 24-5-11-10(a)(2) requires a home improvement supplier provide the names of any agent to whom consumer problems and inquiries can be directed. Mr. Klein's contract with Ms. Johnson does not contain the name of any such agent.

13. Ind. Code § 24-5-11-10(a)(7) requires a home improvement supplier provide a statement of any contingencies that would materially change the approximate completion date. Mr. Klein's contract with Ms. Johnson contains no such contingency.

14. Ind. Code § 24-5-11-10(a)(9) requires the home improvement contract to include a legible or a typed version of the home improvement supplier's name, or the supplier's agent, and for each consumer who is a party to the home improvement contract directly after or below their signature. Mr. Klein's contract with Ms. Johnson does not contain the required signatures.

15. Mr. Klein's failure to comply with the requirements of the Indiana Home Improvement Contracts Act, constitutes a deceptive act and subjects Mr. Klein to the remedies and penalties of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1, *et seq.*

16. On August 11, 2006, Ms. Johnson tendered check number 683 to Mr. Klein, in the amount of One Thousand Five Hundred Sixty-Seven Dollars and Fifty Cents (\$1,567.50) as partial payment toward the home improvement.

17. On August 14, 2006, Mr. Klein endorsed a check (number 683) and made it payable to Mrs. Klein, which she subsequently deposited into her individual checking account.

18. On August 11, 2006, Ms. Johnson tendered a check (number 684) to Mr. Klein in the amount of Three Hundred Fifty Dollars (\$350.00) as partial payment toward the home improvements.

19. On August 14, 2006, Mr. Klein endorsed a check (number 684) and made it payable to Mrs. Klein, which she subsequently deposited into her individual checking account.

20. Mr. Klein represented he would issue a refund to Ms. Johnson and was sending a Cashier's Check from Fifth Third Bank, check number 10372426, in the amount of One Thousand Nine Hundred Seventeen Dollars and Fifty Cents (\$1,917.50).

21. Mr. Klein has not started the work on Ms. Johnson's property, nor has he issued the refund.

22. Since at least May 15, 2002, Mr. Klein has acted as a supplier and engaged in or solicited home improvements with consumers, including Cartersburg Community Church and Ms. Johnson.

23. Mr. Klein's contract with Cartersburg Community Church to renovate the church for a total price of Twenty-Six Thousand Five Hundred and Seventy-Six Dollars and Seventy-Eight Cents (\$26,576.78) constitutes a "consumer transaction" as defined at Ind. Code § 24-5-0.5-2(a)(1).

24. The Church has paid Mr. Klein a total of Nineteen Thousand Five Hundred and Sixteen Dollars and Thirty-Nine Cents (\$19,516.39).

25. Mr. Klein also entered into a contract with Shanika Johnson to re-roof her home and replace the siding for a total price of Three Thousand Eight Hundred and Thirty-Five Dollars (\$3,835.00), of which she paid One Thousand Five Hundred Sixty-Seven Dollars and Fifty Cents (\$1,567.50) as a down payment, and this also constitutes a "consumer transaction" as defined by Ind. Code § 24-5-0.5-2(a)(1).

26. Mr. Klein violated Ind. Code § 24-5-11-10 by failing to provide a completed home improvement contract to Shanika Johnson, which also constitutes a deceptive act, pursuant to Ind. Code § 24-5-11-14.

27. Ind. Code § 24-5-0.5-3(a)(1) makes it a deceptive act for a Defendant to represent, either orally or in writing, that the subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or should reasonably know it does not have. Mr. Klein entered into at least two (2) consumer transactions, involving Cartersburg

Community Church and Shanika Johnson, promising to perform home improvements, but failed to perform the work as represented.

28. Ind. Code § 24-5-0.5-3(a)(8) makes it a deceptive act for a supplier to represent, either orally or in writing, that a consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is false and if the supplier knows or should reasonably know that the representation is false. Mr. Klein did not do any work on Ms. Johnson's home, told her he would remedy his failure to complete the job by refunding her money, and has yet to issue the promised refund.

29. Ind. Code § 24-5-0.5-3(a)(10) makes it a deceptive act for a supplier to represent that the supplier is able to deliver or complete the subject of a consumer transaction within a reasonable period of time, if he knows or should reasonably know he cannot. If no estimated completion time is represented, the supplier is presumed to have represented that the transaction will be completed within a reasonable period or time. Mr. Klein represented he would complete the work on Cartersburg Community Church by July 26, 2006 and has yet to either complete the work or to issue a refund to the Church.

30. Mr. Klein is presumed, as a matter of law, to have represented he would complete the work on Ms. Johnson's home within a reasonable period of time. Mr. Klein, however, has not done any work on Ms. Johnson's home and has yet to issue a refund to Ms. Johnson.

31. Mr. Klein entered into the transactions with Cartersburg Community Church and Ms. Johnson during the Summer of 2006. Mr. Klein has had over one (1)

year to complete these jobs, or to issue a refund, and yet chose to do neither. Therefore, Mr. Klein has misrepresented his ability to complete these jobs within a stated or reasonable period of time, and has violated Ind. Code § 24-5-0.5-3(a)(10).

32. Mr. Klein failed to properly complete the work for Cartersburg Community Church as represented, so the Church is entitled to restitution in the amount of Nineteen Thousand Five Hundred and Sixteen Dollars and Thirty-Nine Cents (\$19,516.39), pursuant to Ind. Code § 24-50.5-4(c)(2).

33. Mr. Klein did not do any work on Ms. Johnson's home, so Ms. Johnson is entitled to consumer restitution in the amount of One Thousand Five Hundred Sixty-Seven Dollars and Fifty Cents (\$1,567.50), pursuant to Ind. Code § 24-50.5-4(c)(2).

34. Cancellation of Mr. Klein's contracts with Cartersburg Community Church and Ms. Johnson, pursuant to Ind. Code § 24-5-0.5-4(d), is also an appropriate remedy for the Defendant's failure to perform the contracted work.

35. The State of Indiana is entitled to its reasonable costs of investigation and prosecution of this action, pursuant to Indiana Code § 24-5-0.5-4(g).

36. The Office of the Attorney General has spent Fourteen and Nine-Tenths (14.90) Hours in the investigation and prosecution of this case and has incurred costs totaling Two Thousand Five Hundred Fifteen Dollars and Ninety-Six Cents (\$2,515.96).

37. Mr. Klein's seven (7) deceptive acts identified above constitute knowing violations of the Deceptive Consumer Sales Act, pursuant to Ind. Code § 24-5-0.5-4(g), and subject Mr. Klein to a civil penalty of a fine not exceeding Five Thousand Dollars (\$5,000.00) per violation.

38. Mr. Klein's seven (7) deceptive acts identified above constitute intentional violations of the Deceptive Consumer Sales Act, pursuant to Ind. Code § 24-5-0.5-8, and subject Mr. Klein to a civil penalty of a fine not exceeding Five Hundred Dollars (\$500.00) per violation.

39. Mr. Klein's seven (7) deceptive acts identified above violate the prior Court-ordered injunction and subject Mr. Klein to a civil penalty of not more than Fifteen Thousand Dollars (\$15,000.00) per violation, pursuant to Ind. Code § 24-5-0.5-4(f).

40. A prior Judgment was entered against Mr. Klein on May 15, 2002 in the Marion Superior Court, which included a monetary judgment in the amount of Eleven Thousand Six Hundred Dollars (\$11,600.00).

41. Despite this Judgment, Mr. Klein has made no payments to the State of Indiana and the Judgment is still owing.

42. Mr. Klein made several transfers of assets to his wife, Rhonda Klein.

43. Mr. Klein did not receive a reasonably equivalent value from Mrs. Klein, in exchange for these transfers.

44. These assets were transferred by Mr. Klein to Mrs. Klein with the intent to hinder, delay or defraud Mr. Klein's present and future creditors.

45. Mr. Klein reasonably should have believed he would incur debts beyond his ability to pay as the debts became due.

46. Mr. Klein became insolvent at the time of the transfers, or became insolvent as a result of the transfer.

47. Under Ind. Code § 32-18-2-14(1), the inter-spousal transfers of assets from Mr. Klein to Mrs. Klein are fraudulent transfers of assets.

48. As a result of these transfers, Mrs. Klein has assisted her husband in the fraudulent transfer of assets and is indebted to the State of Indiana in the amount of Twenty-One Thousand Four Hundred Thirty-Three Dollars and Eighty-Nine Cents (\$21,433.89).

49. The Office of the Attorney General has previously attached and garnished funds in the amount of Two Thousand Six Hundred Seventy-Two Dollars and Eighteen Cents (\$2,672.18), which is currently held in escrow pursuant to a previously approved Agreed Preliminary Injunction and Attachment and Garnishment.

50. The Defendants have failed to meet their burden of proof regarding their affirmative defenses of accord and satisfaction, the Church imposed unreasonable requirements and caused any alleged defective workmanship, impossibility, prior Judgment, collateral estoppel and other equitable relief, improper venue, and failure to state a claim. These affirmative defenses are without merit and fail as a matter of law.

51. There is no genuine issue as to any material fact and the Plaintiff is entitled to Summary Judgment as a matter of law.

JUDGMENT

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED the Plaintiff's Motion for Summary Judgment is **GRANTED** in favor of the Plaintiff, State of Indiana, and against the Defendants, Rhonda Klein and Richard Klein.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, pursuant to Ind. Code § 24-5-0.5-4(c)(1), the Defendant, Richard Klein, his agents, representatives, employees, successors and assigns are permanently enjoined from engaging in the following conduct in violation of Ind. Code § 24-5-11 and Ind. Code § 24-5-0.5.

1. in the course of entering into home improvement transactions, failing to provide the consumer a written, completed contract meeting the requirements of Ind. Code § 24-5-11-4, which includes at a minimum the following:
 - a) The name of the consumer and the address of the residential property that is the subject of the home improvement;
 - b) The names and addresses of the Defendant and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
 - c) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
 - d) A reasonably detailed description of the proposed home improvements, and if the description does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
 - e) The approximate starting and completion date of the home improvements;
 - f) A statement of any contingencies that would materially change the approximate completion date;

- g) The home improvement contract price; and
 - h) Signature lines for the Defendant or the Defendant's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or a typed version of that person's name placed directly after or below the signature;
2. in the course of entering into home improvement transactions, failing to agree unequivocally by written signature to all of the terms of a home improvement contract before the consumer signs the home improvement contract and before the consumer can be required to make any down payment;
 3. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer before it is signed by the consumer;
 4. representing, expressly or by implication, the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or reasonably should have known it does not have;
 5. representing, expressly or by implication, the subject of a consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is false and if the Defendant knows or reasonably should know the representation is false; and

6. representing, expressly or by implication, the Defendant is able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendant knows or reasonably should know he cannot.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of the Plaintiff, State of Indiana, and against the Defendant, Richard Klein, as follows:

1. The contracts entered into by Mr. Klein with Cartersburg Community Church and Shanika Johnson, are cancelled pursuant to Ind. Code § 24-5-0.5-4(d).
2. The Defendant shall pay restitution, pursuant to Ind. Code § 24-5-0.5-4(c)(2), in the total amount of Twenty-One Thousand Eighty-Three Dollars and Eighty-Nine Cents (\$21,083.89), payable to the Office of the Attorney General, for allocation and distribution to the following in the following amounts:

| | | |
|----|--|--------------------|
| 1. | Cartersburg Community Church | \$19,516.39; and |
| 2. | Shanika Johnson of Indianapolis, Indiana | \$ 1,567.50. |
| 3. | Less funds paid to Cartersburg Community Church from Richard Klein's bonding company | \$2,100.00 |
| | Total | \$18,983.89 |

3. The Defendant shall pay the Office of the Attorney General its costs in investigating and prosecuting this action, pursuant to Ind. Code § 24-5-0.5-4(c)(3), in the amount of Two Thousand Six Hundred Seventy-Two Dollars and Eighteen Cents (\$2,672.18).

4. The Defendant shall pay civil penalties, pursuant to Ind. Code § 24-5-0.5-4(g), for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00), payable to the State of Indiana.
5. The Defendant shall pay civil penalties, pursuant to Ind. Code § 24-5-0.5-8, for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00), payable to the State of Indiana.
6. The Defendant shall pay civil penalties, pursuant to Ind. Code § 24-5-0.5-4(f), for the Defendant's violation of the terms of a prior injunction issued pursuant to Ind. Code § 24-5-0.5-4(c), in the amount of Ten Thousand Dollars (\$10,000.00), payable to the State of Indiana.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of the Plaintiff, State of Indiana, and against the Defendant, Rhonda Klein, as follows:

1. The Defendant, Rhonda Klein, shall pay the amount of Eighteen Thousand Nine Hundred Eighty-Three Dollars and Eighty-Nine Cents (\$18,983.89) toward this Judgment, based upon the inter-spousal transfer of funds to Rhonda Klein by her husband, Richard Klein, which constitutes a fraudulent transfer of assets, pursuant to Ind. Code § 32-18-2-14(1).

A monetary judgment shall therefore be entered in favor of the Plaintiff, State of Indiana, and against the Defendant, Richard Klein, in the amount of Thirty-Seven Thousand One Hundred Fifty-Six Dollars and Seven Cents

(\$37,156.07) and the Defendant, Rhonda Klein, in the amount of Eighteen Thousand Nine Hundred Eighty-Three Dollars and Eighty-Nine Cents (\$18, 983.89).

The Office of the Attorney General currently holds Two Thousand Six Hundred Seventy-Two Dollars and Eighteen Cents (\$2,672.18) in escrow, pursuant to this Court's Order of March 9, 2007 and the Parties' Agreed Entry approved by this Court on March 19, 2007. This amount shall be released to the Office of the Attorney General as partial satisfaction of the monetary provisions of this judgment. The Attorney General shall, in his sole discretion, use these funds to partially satisfy the complaints of Cartersburg Community Church and Shanika Johnson.

All of which is ORDERED, ADJUDGED AND DECREED, this 28 day of

July, 2008.



Magistrate, Hamilton Superior Court 1

DISTRIBUTION:

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